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AI Index: AMR 13/24/83
Distr: SC/CO/GR

AJ108

Our reference:
ARGENTINA/SCQ/TF/VS
Direct line:

ORIGINAL TEXT: SPANISH

His Excellency
President of the Republic of Argentina
General Reynaldo Bignone
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Buenos Aires, C.F.
Argentina

ARGENTINA PROJECT ES200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
☒ Release ☐ Excise ☐ Deny
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Declassify: ☐ In Part ☐ In Full
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Your Excellency, Date _____ Declassify on _____ Reason _____

12 October 1983

For the past ten years Amnesty International has made frequent representations to successive Argentine governments about violations of human rights, and in particular, the practice of enforced or involuntary "disappearances". This practice has claimed thousands of victims whose cases have been meticulously documented by Amnesty International and other organisations. Evidence of official responsibility for these acts, which has been carefully compiled by Amnesty International, has been regularly transmitted to the Argentine government. Amnesty International has the honour of addressing Your Excellency on this occasion about the implications of the recently enacted Law of National Pacification on the question of "disappeared-detainees".

During the period covered by the Law, 25 May 1973 -17 June 1982, Amnesty International has repeatedly called upon the Argentine authorities to take two measures: to end the policy of "disappearances" and to give a full account of the fate of those registered as "disappeared". In the case of the former, some progress has been made. Since 1980 the scale of "disappearances" has been greatly reduced, although the practice has apparently still not been eradicated. But with regard to the latter the Argentine authorities have not taken any steps to clarify the situation of "disappeared-detainees". The document published by the Argentine Junta in April 1983, which asserted that the "disappeared" should be regarded as dead, only deepened the concern about these cases among the victims' families and the international community.

The Law of National Pacification would appear to shut off the possibility of establishing the truth about the following key questions: Why were individuals abducted and on whose authority? What treatment were they subjected to? What has happened to them since?

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- 2 -

Under international law the Argentine government itself, notwithstanding the amnesty, retains full responsibility for any human rights violations committed by its agents in enforced or involuntary "disappearances". The new Law of National Pacification is incompatible with Resolution 33/173 of the General Assembly of the United Nations, adopted in December 1978, calling upon governments "to ensure that law enforcement and security authorities or organisations are fully accountable, especially in law, in the discharge of their duties, - such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights". Furthermore Resolution XXXIV of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted on 10 September 1981, urged that "States in which persons have been reported to have disappeared should repeal or refrain from adopting laws which could impede inquiries concerning such disappearances".

In addition in Resolution 1983/23, adopted on 5 September 1983, the Sub-Commission also stressed the right of families to know the fate of their relatives by calling upon governments "in the event of reports of enforced or involuntary disappearances, to devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations". Amnesty International believes that in three important respects the new law prevents the implementation of human rights standards: it makes it practically impossible to determine what has happened to the "disappeared" prisoners, it could encourage further human rights violations by giving the perpetrators of past crimes a sense of impunity and it prevents the perpetrators of the "disappearances" from being brought to justice.

The Law of National Pacification has been presented as an amnesty for crimes committed over the past ten years connected to subversion. Yet specific provisions of this law are particularly disquieting. Article 1 apparently gives a complete amnesty for all crimes committed by both subversives and anti-subversive groups. This would seem to represent an alteration of the military's previous position, which was that the terrorists committed crimes but those who opposed them did not. Yet on reading the subsequent articles the law appears designed to grant complete immunity from prosecution to all members of the military, police and security forces. For example, final convictions for crimes and deeds of a penal nature referred to in Article 1 will not benefit under the Law (see Article 3). But current criminal proceedings related to such offences will be submitted automatically to the appropriate Court of Appeal. Complaints or suits filed for alleged crimes and deeds included in Article 1 will be immediately dismissed (see Articles 8 and 12). Since the persons already convicted are almost exclusively "subversives" but current cases might well concern military officials, the effect

- 3 -

of these provisions appears likely to leave imprisoned those convicted for opposition activities while giving immunity to those who have committed serious crimes against alleged subversives such as abduction, torture and murder.

Amnesty International is concerned with the latitude of interpretation that this Law allows to the Armed Forces. The stipulation in Article 5 that "no-one can be questioned, investigated or arraigned, or called upon in any manner whatsoever by dint of allegations or suspicion of having committed crimes or having participated in activities referred to in Article 1", clearly flouts numerous recommendations related to "disappearances" of both the United Nations Commission of Human Rights and the Inter-American Commission on Human Rights of the Organisation of American States. Amnesty International believes that the attempt to block all further investigations into this problem is utterly indefensible. Furthermore, if neither questioning nor investigation is permitted, how will it be possible to determine that the alleged offences do indeed fall under Article 1. According to Article 7 the law can be fully enforced "upon request by a party", which would mean that a member of the police, military or security forces, who has committed a crime covered by Article 1, can himself define the nature of the charges against him and then simply apply to the appropriate court for an amnesty. Amnesty International believes that this comes uncomfortably close to a defendant being the judge in his own case.

Amnesty International is also concerned about the provisions of the Law as they apply to Argentine citizens who are not "legally and openly resident in the country, or in Argentine territory or places under Argentine jurisdiction who, by their conduct have shown their intention of maintaining their connection with these [subversive] associations". Article 2 does not make it clear whether the Amnesty Law excludes all Argentines living abroad or whether there must also be evidence that they have continued to be associated with subversive groups. If such evidence is required it is not clear how it will be gathered and assessed.

In conclusion, given the gravity of the "disappearance" problem in Argentina, and given the obligations placed on the Argentine government under international law to :

- a) - investigate the circumstances of the "disappearance" of each individual, registered by Amnesty International and other human rights organisations, following his abduction by members of the police, military, or security forces;

- 4 -

- b) explain to the family of each victim what has happened to the "disappeared" person;
- c) pay appropriate compensation to the victims and/or their families for any damages suffered as a result of the "disappearance",

Amnesty International is concerned that such measures may in practice be incompatible with the recent Law. Amnesty International therefore respectfully urges the Argentine government to annul the Law of National Pacification to allow for an appropriate solution of the problem of the "disappeared" persons.

Yours sincerely and respectfully,

Thomas Hammarberg
Secretary General